

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Scott Sheeks,) CASE NO. _____
)
 Plaintiff,)
)
 vs.) **NOTICE OF REMOVAL
 AND DESIGNATION
 OF TRIAL**
)
 CNH Industrial America LLC,)
)
 Defendant.)

Pursuant to 28 U.S.C. § 1441, Defendant CNH Industrial America LLC ("Defendant"), removes this action from the District Court of Hall County, Nebraska, to the United States District Court for the District of Nebraska. The United States District Court for the District of Nebraska embraces the District Court of Hall County, Nebraska. In support of this Notice, Defendant contends as follows:

I. FACTUAL BACKGROUND

1. On January 4, 2021, Plaintiff Scott Sheeks ("Plaintiff") filed his Summons and Complaint with the Clerk of the District Court of Hall County, Nebraska, and attempted to serve Defendant by mail with a copy of the Summons and Complaint. (Attached collectively hereto as **Exhibit A**.)

2. Other than the Summons and Complaint, Plaintiff has not served or attempted to serve Defendant with anything in connection with this matter.

3. Defendant has not filed an Answer or otherwise responded to the Complaint. The time for Defendant to file a responsive pleading has not yet expired.

4. Defendant is filing this Notice of Removal within thirty (30) days of its receipt of Plaintiff's Complaint. It is thus timely filed pursuant to 28 U.S.C. § 1446(b).

5. Defendant will file this Notice of Removal with the Clerk of the District Court of Hall County, Nebraska. (Attached hereto as **Exhibit B.**)

6. Defendant has provided Plaintiff with written notice of this filing as well as copies of this Notice and all exhibits attached hereto, as required by 28 U.S.C. § 1446(d). The proof of service of this Notice of Filing Notice of Removal will be filed with this Court.

7. Because this action is pending in the District Court of Hall County, Nebraska, venue for the purposes of removal is proper in this Court pursuant to 28 U.S.C. § 1441(a).

II. FEDERAL QUESTION JURISDICTION

8. Federal district courts have original jurisdiction over actions “arising under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331. An action “arises” under federal law “only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Markham v. Werten*, 861 F.3d 748, 754 (8th Cir. 2017). Thus, if the complaint contains “a federally created claim for relief,” “there is no serious debate that [this] is generally a sufficient condition for federal-question jurisdiction.” *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 377 (2012) (internal quotations omitted). Further, there is no amount-in-controversy or diversity requirement for federal-question jurisdiction. *See id.*

9. Here, Plaintiff’s Complaint raises a federal question by alleging violations of The Family and Medical Leave Act (“FMLA”), 29 U.S.C. §§ 2611 *et seq.* *See* Compl. ¶¶ 4, 25-27. The cause of action specifically references the FMLA, lists Plaintiff’s rights under the FMLA, and alleges Defendant violated those rights. *Id.* Thus, on its face, the Complaint establishes that the FMLA, a federal law, creates the cause of action in the Complaint. This Court has federal-question jurisdiction, and removal is proper.

III. NON-WAIVER OF DEFENSE

10. By this Notice of Removal, Defendant does not waive any objections to defects in process or service of process, jurisdiction, venue, or any other defense.

11. By this Notice of Removal, Defendant does not admit any of the allegations in Plaintiff's Complaint.

IV. CONCLUSION

12. Because this action arises under a federal question, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331. Accordingly, this action is removable to this Court pursuant to 28 U.S.C. § 1441(a).

Defendant CNH Industrial America LLC hereby states this action is properly removable, respectfully requests this action now pending before the District Court of Hall County, Nebraska, be removed to this Court, and designates Omaha as the place of trial.

Dated this 22nd day of January, 2021.

CNH Industrial America LLC, Defendant

By: /s/ Timothy J. Thalken
Timothy J. Thalken, #22173
Brian J. Fahey #25753
FRASER STRYKER PC LLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102-2663
(402) 341-6000
tthalken@fslf.com
bfahey@fslf.com

Pending admission *pro hac vice*

Joel O'Malley
Chelsea Bodin
NILAN JOHNSON LEWIS PA
250 Marquette Avenue South, Suite 800
Minneapolis, MN 55401
Telephone: (612) 305-7500
Fax: (612) 305-7501
jomalley@nilanjohnson.com
cbodin@nilanjohnson.com

ATTORNEYS FOR DEFENDANT

2498808v1